

Appln. No. 09/865,393
Response Dated: Feb. 10, 2005
Office Action dated Nov. 10, 2004
Docket No. 6169-203

IBM Docket No.: BOC9-2000-0067

REMARKS/ARGUMENTS

These remarks are made in response to the Office Action of November 10, 2004 (Office Action). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due.

As a preliminary matter, Applicants wish to thank the Examiner for a thorough review of the instant application and for providing clear, detailed comments to assist the Applicants in generating their response. Additionally, Applicants wish to thank the Examiner for discussing the finality of the currently pending Office Action in a telephone conference with the undersigned on January 14, 2005. During this telephone conference, the Examiner agreed to remove the finality of the present Office Action based upon the newly cited reference of Bloch and new arguments related to the same. Consequently, the present response is to be treated as a response to a non-final Office Action, in accordance with agreements made during the aforementioned telephone conference.

In paragraph 7, Claim 11 is objected to due to minor informalities. Applicants have amended Claim 11 to correct these informalities. Accordingly, Applicants respectfully request the Examiner withdrawal the objections to claim 11.

In paragraphs 8-9 of the Office Action, claims 1 and 15 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Canada Patent Application 2,287,844 to D'ippolito, Tommaso, *et al.* (Tommaso). In paragraphs 10-11 of the Office Action, claims 2-4, and 16-25 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Tommaso in view of U.S. Patent Number 6,792,468 to Bloch, *et al.* (Bloch).

In response, Applicants have amended claims 1 and 15 to clarify that the data for temporally coordinating interactions includes for each of the values an identifier used to record a time at which the corresponding value was measured, as supported by page 22, lines 1-7. Applicants have also amended claims 1 and 15, to clarify that an analysis event can be detected that indicates that a post-performance analysis is to be performed for a designated time, as supported by page 22, lines 15-20, FIG. 4, item 440, and throughout the

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specification. Claims 1 and 15 have further been amended to clarify that time range can be determined to be applicable for the designated time and the retrieved values can have associated identifiers specifying times within the determined range, as supported between page 22, line 15 to page 24, line 12. Claims 5, 20, and 10 have been amended in a similar manner.

Claims 2, 12, and 17 have been amended to be consistent to the amendments made to the independent claims upon which they depend. No new matter has been added as a result of these amendments.

Prior to addressing the rejections on the art, a brief review of the Applicants' invention is in order. Applicants disclose a method and apparatus for post-analyzing and sequentially visualizing a plurality of predefined metrics stored in a dynamic data space. That is, Applicants' claimed and disclosed subject matter is directed towards post-performance monitoring of a network, as noted at page 3, lines 2-9. Applicants' claimed subject matter solves problems with accurately sequencing events to perform post-event analysis. Applicants' claimed invention also solves problems with overwhelming an operator with a wealth of data to be analyzed, as noted at page 3, lines 16-22.

In contrast to the Applicants' claimed invention, Tommaso teaches a real-time performance monitoring system. Tommaso is silent in regard to performing post-performance monitoring. Additionally, Tommaso fails to provide teachings concerning capturing indicators of times at which values were measured and later using these indicators to perform post-performance monitoring. Notably, the capturing of real-time data would not naturally include recording an indicator of the time for which the values were measured, as such when displayed and monitored real-time, such an indicator would be a needless waste of additional storage space. Not surprisingly, Tommaso, which does not contemplate post-performance analysis in the manner claimed by the Applicants, does not teach that such indicators should be stored or utilized.

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Applicants believe the Examiner is either confused regarding the Applicants' claimed invention, which relates to post-performance metrics, or confused regarding the nature of Tommaso. Should the confusion relate to the previous language used within the claims, the Applicants' amendments as of this response should clarify matters. Should the confusion relate to the nature of Tommaso, Applicants have attempted to resolve this confusion by extracting Tommaso citations to illustrate that Tommaso does not contemplate post-performance monitoring.

- Abstract
 - silent regarding post-analysis performance monitoring
- page 3, lines 1-3
 - explicitly states that the invention gathers **real-time performance metrics** to enable **real time analysis and real time monitoring**
- page 3, lines 11-16
 - silent regarding post-analysis performance monitoring
- page 3, lines 20-23
 - explicitly claims real-time performance metrics (not post-analysis)
- page 6, lines 10-17 & FIG 1
 - states that real time data is stored, no mention about post-analysis performance metrics is included.
- page 9, lines 4-8
 - silent regarding post-analysis performance monitoring. Lines 14-16 mention simultaneously displaying received data which is in line with real-time performance monitoring.
- page 11, lines 15-22 (previously occurring network events)
 - silent regarding post-analysis performance monitoring, explicitly talks about "real time information about the functioning, or performance of the network (lines 20-22)"

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- page 12, lines 11-15
 - describes that main memory or temporary memory can be accessed via hyperlinks, silent regarding post-analysis performance monitoring
- page 12, lines 17-20
 - describes that one of the real-time metrics relating to a problem can include a log time of the problem, this citation is silent regarding post-analysis performance monitoring as claimed by the Applications
- page 13, lines 14-22
 - describes a report summary screen, which is a standard GUI screen used for system administration, this citation is silent regarding post-analysis performance monitoring as claimed by the Applications
- FIG. 7 (time stamp)
 - describes a network event browser screen, which is a standard GUI screen used for system administration (complete with problems detailed in the Applicants' background (page 3, lines 21-220, this citation is silent regarding post-analysis performance monitoring as claimed by the Applications

Turning specifically to the rejections on the art, in paragraphs 8-9 of the Office Action, claims 1 and 15 have been rejected under 35 U.S.C. § 102(a) as being anticipated by Tommaso. In claims 1 and 15, Applicants explicitly claim the step of:

storing in a datastore, values corresponding to predefined metrics received from an agent, each of said values representing a characteristic of one of a plurality of entities in a data space, wherein data for temporally coordinating interactions among the entities is also stored in the datastore, wherein said data for temporally coordinating interactions comprises for each of

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said values an identifier used to record a time at which the corresponding value was measured;

detecting an analysis event that indicates that a post-performance analysis is to be performed for a designated time;

determining a time range applicable for the designated time;

retrieving said stored values from said datastore that have associated identifiers specifying times within the determined time range; and

displaying said retrieved values for selected ones of said predefined metrics for sequential viewing, on a graphical display, previously occurring network events involving the entities, wherein the displaying step utilizes previously stored temporal data to display interactions among at least a portion of the entities in a time sequenced manner.

Tommaso fails to explicitly or inherently teach that data for temporally coordinating actions is stored in a data store, which is not explicitly or inherently taught by the cited passage of page 9, lines 4-8 discussed above.

Tommaso fails to explicitly or inherently teach the storage of an identifier used to record a time at which the corresponding value was measured, as claimed in the storing step.

Tommaso fails to explicitly or inherently teach either the detecting or the determining step, claimed above.

Tommaso fails to explicitly or inherently teach using temporal data to display interactions among entities in a time sequenced manner.

Since each claimed limitation under § 102(a) must be explicitly or inherently taught, and since Tommaso fails in this regard, the § 102(a) rejection to claims 1 and 15 should be withdrawn, which action is respectfully requested.

In paragraphs 10-11 of the Office Action, claims 2-4, and 16-25 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Tommaso in view of U.S. Patent

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Number 6,792,468 to Bloch, *et al.* (Bloch). Bloch teaches a media streaming technique that utilizes a client pull data transport model. Bloch provides no teachings regarding performance metric monitoring.

Referring to claims 1 and 15, Tommaso fails to explicitly or implicitly teach: that data for temporally coordinating actions is stored in a data store, (not explicitly or implicitly taught by page 9, lines 4-8 as discussed above), the storage of an identifier used to record a time at which the corresponding value was measured (as claimed in the storing step) the detecting or the determining step, or using temporal data to display interactions among entities in a time sequenced manner. Bloch fails to cure these deficiencies.

Since each claimed limitation must be explicitly or implicitly taught under § 103(a), the § 103(a) rejections to claims dependent upon claims 1 and 15 (claims 2-4 and 16-19) should be withdrawn, which action is respectfully requested.

Referring to independent claims 5, 10, and 20, Applicants claim that values are stored along with corresponding identifiers that record a time at which the corresponding value was measured and claim that these values are selectively retrieved from the data stores based on how the indicators compare to a time of the previously occurring network events. That is, previously stored metrics can be "played back" to perform post-analysis performance monitoring using these previously stored values. The play back can present time sequenced network events within a GUI as though those events were occurring real-time. A system administrator can, therefore, control the time element of the play-back to step forward and backward in time when analyzing the previously occurring network events.

Nothing similar is contemplated by Tommaso, which only describes a real-time performance monitoring technique. Bloch is non-analogous art, as it does not relate to network performance metrics, system administration, or any other relevant area. Teachings pertaining to network administration are not analogous to teachings pertaining to streaming media.

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More specifically, Tommaso, Bloch, and combinations thereof fail to explicitly or implicitly teach that identifier are to be stored that record a time at which the corresponding value was measured. Additionally, Tommaso, Bloch, and combinations thereof fail to explicitly or implicitly teach replaying previously occurring network events based upon performance metric data in any manner. Further, Tommaso, Bloch, and combinations thereof do not explicitly or implicitly teach that retrieving values based on how indicators associated with the values compare to a time of a previously occurring network event.

Since each claimed limitation must be explicitly or implicitly taught under § 103(a), the § 103(a) rejections to claims 5, 10, 20, and claims dependent upon (claims 6-9, 11-14, and 21-25) then should be withdrawn, which action is respectfully requested.

Even though the Application should now be in a condition for allowance, Applicants take a moment to specifically refer to aspects of dependent claims not explicitly or implicitly taught by Tommaso, Bloch, or combinations thereof.

Referring to claims 2, 7, 12, and 17, Applicants claim using a starting time and ending time and to retrieve metrics having indicators between these times. The Examiner cites page 12, lines 19-25 and FIG. 7 of Tommaso for this teaching. The cited passage, however discusses an event viewer capable of displaying a log time as one of the event elements. The cited passage does not explicitly or implicitly teach using a starting time and ending time to retrieve metrics. Such a teaching, which is claimed by the Applicants, is not explicitly or implicitly taught anywhere in Tommaso, Bloch, or combinations thereof.

Referring to claims 3, 11, and 18, Applicants claim that a GUI can display real-time metrics as well as display previously stored metrics (post-event analysis within a GUI) in accordance with the inventive arrangements disclosed therein. Tommaso fails to teach or suggest post-event analysis techniques. Bloch fails to cure this deficiency.

Additionally, no proper motivation exists to combine the teachings of Tommaso and Bloch. According to MPEP 2143.01, the level of skill in the art cannot be relied upon to provide the suggestion to combine references (Al-Site Corp v. VSI Int'l, 174 F.3d 1308 (Fed.

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Cir 1999)). Instead (again according to MPEP 2143.01), in determining the propriety of the Patent Office case for obviousness in the first instance, it is necessary to ascertain whether or not the reference teachings would appear to be sufficient to one of ordinary skill in the relevant art having the references before him to make the proposed substitution, combination, or other modification. (In re Linter, 458, F2d 1013 (CCPA 1972)). One of ordinary skill in the art would not contemplate combining a media streaming patent (Bloch) that does not discuss network performance metrics with a real-time network monitoring patent (Tommaso) that does not discuss media streaming. That is, the mere fact that it may be possible to combine two references is insufficient justification for doing so, assuming that nothing within the four corners of the references themselves provides motivation for the proposed combination.

Additionally, under 35 U.S.C. § 103(a) referenced art cannot be modified in such a manner to change its principle of operation. Tommaso's architecture for operation is the carrier network shown in FIG. 2 further detailed in FIG. 3 and 4. This is a completely different architecture that that relied upon in Bloch (FIG. 1). The address bus structure 102 of Bloch would not operate properly in a networking environment. Thus, either the principles of operation taught by Tommaso or the principles of operation taught by Bloch, would have to be modified to combine the two teachings.

Applicants assume that in attempting to combine references, the Examiner is implicitly trying to modify the principle operations of a remote display terminal of FIG. 3 from Tommaso, to include client-based media streaming techniques based on frames (FIG. 2 of Bloch). Applicants are not sure how such a combination would be implemented, and do not believe any such implementation would be obvious to one of ordinary skill in the art. Regardless, any such implementation would require at very least the principles of operation taught in Tommaso to be substantially modified, perhaps to an extent that would render Tommaso unsatisfactory for its intended purpose.

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In summary, Tommaso fails to teach, explicitly, inherently, or implicitly each of the claimed limitations. Further, Bloch fails to cure these deficiencies in regard to explicitly or implicitly teaching the claimed limitations that are absent from Tommaso. Additionally, Bloch is non-analogous art for purposes of network performance metric teachings. No motivation is present within Tommaso or Bloch to combine the teachings of these two different references. Moreover, Tommaso and Bloch cannot be modified and directed towards the Applicants' claimed invention without (1) rendering the modified version of Tommaso unsatisfactory for its intended purpose and/or without (2) changing the principle of operation upon which Tommaso is based. Therefore, the § 103(a) rejections based upon Waibel should be withdrawn, which action is respectfully requested.

Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Amendment, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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